

ASSEMBLY BILL

No. 371

Introduced by Assembly Member Goldberg

February 11, 2005

An act to amend Sections 5410 and 5415 of the Health and Safety Code, and to amend Sections 13260 and 13523 of, and to add Sections 13552.1, 13552.5, and 13557 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 371, as introduced, Goldberg. Water recycling.

(1) Existing law governing sanitation defines “waste” to include sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature.

This bill would exclude from that definition recycled water as defined.

(2) Existing law governing sanitation provides that it does not limit the authority of a city or county to adopt and enforce certain regulations relating to the use of recycled water.

This bill would provide that it does not limit the authority of a city or county to adopt and enforce regulations relating to the use of secondary recycled water, as defined.

(3) The Porter-Cologne Water Quality Control Act requires certain entities required to file a waste discharge report with the State Water Resources Control Board to submit an annual fee according to a fee schedule established by the state board.

This bill would require the state board, in establishing the amount of a fee that may be imposed upon any publicly owned treatment works,

to structure the fee schedule to provide incentives for water recycling to facilitate the state's goal of maximizing water recycling.

(4) The Water Recycling Law, which regulates water reclamation and reuse, requires each California regional water quality control board, after consulting with and receiving the recommendations of the State Department of Health Services and any party who has requested in writing to be consulted, and after any necessary hearing, to prescribe water reclamation requirements for water which is used or proposed to be used as reclaimed water if, in the judgment of the board, it is necessary to protect the public health, safety, or welfare. The law requires the requirements to be established in conformance with uniform statewide reclamation criteria.

This bill would make the reclamation requirements applicable to recycled water rather than reclaimed water. The bill would delete the conformance requirement and would instead require that, if the use of the recycled water is within a category for which the department has established uniform statewide reclamation criteria and the water meets a specified definition, those criteria constitute the sole requirements for the permitted use.

The bill would further amend the law to authorize a fire incident commander to use recycled water to prevent the destruction of life, property, or the environment in a catastrophic fire. The bill would prohibit a recycled water producer, user, or firefighting agency using recycled water for those purposes from being required to file an engineering report before use of the recycled water, but would authorize the regional board to require subsequent notification of the use.

The bill would also require the state board, on or before January 1, 2008, to prescribe general water recycling requirements applicable to nonpotable uses of recycled water, as prescribed. The bill would require general water recycling requirements to replace individual water recycling requirements and waste discharge requirements for nonpotable uses of recycled water. The bill would authorize the state board to establish a reasonable schedule of fees to reimburse the costs it incurs in developing and implementing the general water recycling requirements.

The bill would additionally require the Department of Water Resources, on or before July 1, 2006, in consultation with the State Department of Health Services, to adopt and submit to the California Building Standards Commission a state version of Appendix J of the

Uniform Plumbing Code to provide design standards to safely plumb buildings with both potable and recycled water systems. The bill would require the Department of Housing and Community Development to submit to the commission, on or before July 1, 2006, an amendment to that state version to remove the skull and crossbones symbol for recycled water.

(5) This bill would require that its provisions be known as the Water Recycling Act of 2005. The bill would make related legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the Water Recycling Act of 2005.

3 SEC. 2. The Legislature hereby finds and declares all of the
4 following:

5 (a) The Recycled Water Task Force was convened pursuant to
6 Section 13578 of the Water Code and evaluated the current
7 framework of state and local rules, regulations, ordinances, and
8 permits to identify the opportunities for, and obstacles or
9 disincentives to, increasing the safe use of recycled water.

10 (b) Pursuant to Section 13578 of the Water Code, the task force
11 transmitted to the Legislature on July 3, 2003, a series of
12 recommendations that include, but are not limited to, the
13 following:

14 (1) The need for adherence to uniform statewide recycling
15 criteria established by the State Department of Health Services
16 under Section 13521 of the Water Code.

17 (2) The need to coordinate regulatory programs of the State
18 Water Resources Control Board and the regional water quality
19 control boards.

20 (3) The need to clarify the state preemption of local authority
21 to enact more restrictive requirements on the highest quality
22 treated and recycled water.

23 (4) The need to increase the use of recycled water for
24 firefighting and dual plumbing of buildings.

25 (c) It is the intent of the Legislature to implement the
26 recommendations from the Recycled Water Task Force as the

1 Water Recycling Act of 2005, as a means to help the state meet
2 its goal of recycling 1,000,000 acre-feet of water per year by
3 2010 pursuant to Section 13577 of the Water Code.

4 SEC. 3. Section 5410 of the Health and Safety Code is
5 amended to read:

6 5410. As used in this chapter:

7 (a) "Waste" includes sewage and any and all other waste
8 substances, liquid, solid, gaseous, or radioactive, associated with
9 human habitation, or of human or animal origin, or from any
10 producing, manufacturing, or processing operation of whatever
11 nature. *"Waste" does not include recycled water as defined in*
12 *subdivision (n) of Section 13050 of the Water Code.*

13 (b) "Person" as used in this article also includes any city,
14 county, district, the state or any department or agency thereof.

15 (c) "Waters of the state" means any water, surface or
16 underground, including saline waters, within the boundaries of
17 the state.

18 (d) "Contamination" means an impairment of the quality of
19 the waters of the state by waste to a degree which creates a
20 hazard to the public health through poisoning or through the
21 spread of disease. "Contamination" shall include any equivalent
22 effect resulting from the disposal of waste, whether or not waters
23 of the state are affected.

24 (e) "Pollution" means an alteration of the quality of the waters
25 of the state by waste to a degree which unreasonably affects: (1)
26 such waters for beneficial uses, or (2) facilities which serve such
27 beneficial uses. "Pollution" may include "contamination."

28 (f) "Nuisance" means anything which: (1) is injurious to
29 health, or is indecent or offensive to the senses, or an obstruction
30 to the free use of property, so as to interfere with the comfortable
31 enjoyment of life or property, and (2) affects at the same time an
32 entire community or neighborhood, or any considerable number
33 of persons, although the extent of the annoyance or damage
34 inflicted upon individuals may be unequal, and (3) occurs during,
35 or as a result of, the treatment or disposal of wastes.

36 (g) "Regional board" means any California regional water
37 quality control board created pursuant to Section 13201 of the
38 Water Code.

39 SEC. 4. Section 5415 of the Health and Safety Code is
40 amended to read:

1 5415. No provision in this chapter is a limitation on any of the
2 following:

3 (a) The authority of a city or county to adopt and enforce
4 additional regulations not in conflict with this chapter imposing
5 additional conditions, restrictions, or limitations relating to the
6 disposal of sewage or other waste.

7 (b) The authority of any city or county to declare, prohibit, and
8 abate nuisances.

9 (c) The authority of a state agency in the enforcement or
10 administration of any provision of law which it is specifically
11 permitted or required to enforce or administer.

12 (d) The right of any person to maintain at any time any
13 appropriate action for relief against any private nuisance as
14 defined in the Civil Code or for relief against any contamination
15 or pollution.

16 (e) The authority of a city or county to adopt and enforce
17 regulations relating to the use of *secondary* recycled water, *as*
18 *defined in subdivision (d) of Section 13529.2 of the Water Code,*
19 *in accordance with Chapter 7 (commencing with Section 13500)*
20 *of Division 7 of the Water Code.*

21 SEC. 5. Section 13260 of the Water Code is amended to read:

22 13260. (a) All of the following persons shall file with the
23 appropriate regional board a report of the discharge, containing
24 the information which may be required by the regional board:

25 (1) Any person discharging waste, or proposing to discharge
26 waste, within any region that could affect the quality of the
27 waters of the state, other than into a community sewer system.

28 (2) Any person who is a citizen, domiciliary, or political
29 agency or entity of this state discharging waste, or proposing to
30 discharge waste, outside the boundaries of the state in a manner
31 that could affect the quality of the waters of the state within any
32 region.

33 (3) Any person operating, or proposing to construct, an
34 injection well.

35 (b) No report of waste discharge need be filed pursuant to
36 subdivision (a) if the requirement is waived pursuant to Section
37 13269.

38 (c) Every person subject to subdivision (a) shall file with the
39 appropriate regional board a report of waste discharge relative to

1 any material change or proposed change in the character,
2 location, or volume of the discharge.

3 (d) (1) (A) Each person who is subject to subdivision (a) or
4 (c) shall submit an annual fee according to a fee schedule
5 established by the state board.

6 (B) The total amount of annual fees collected pursuant to this
7 section shall equal that amount necessary to recover costs
8 incurred in connection with the issuance, administration,
9 reviewing, monitoring, and enforcement of waste discharge
10 requirements and waivers of waste discharge requirements.

11 (C) Recoverable costs may include, but are not limited to,
12 costs incurred in reviewing waste discharge reports, prescribing
13 terms of waste discharge requirements and monitoring
14 requirements, enforcing and evaluating compliance with waste
15 discharge requirements and waiver requirements, conducting
16 surface water and groundwater monitoring and modeling,
17 analyzing laboratory samples, and reviewing documents prepared
18 for the purpose of regulating the discharge of waste, and
19 administrative costs incurred in connection with carrying out
20 these actions.

21 (D) In establishing the amount of a fee that may be imposed
22 on any confined animal feeding and holding operation pursuant
23 to this section, including, but not limited to, any dairy farm, the
24 state board shall consider all of the following factors:

25 (i) The size of the operation.

26 (ii) Whether the operation has been issued a permit to operate
27 pursuant to Section 1342 of Title 33 of the United States Code.

28 (iii) Any applicable waste discharge requirement or
29 conditional waiver of a waste discharge requirement.

30 (iv) The type and amount of discharge from the operation.

31 (v) The pricing mechanism of the commodity produced.

32 (vi) Any compliance costs borne by the operation pursuant to
33 state and federal water quality regulations.

34 (vii) Whether the operation participates in a quality assurance
35 program certified by a regional water quality control board, the
36 state board, or a federal water quality control agency.

37 (E) *In establishing the amount of a fee that may be imposed*
38 *upon any publicly owned treatment works pursuant to this*
39 *section, the state board shall structure the fee schedule to*

1 *provide incentives for water recycling to facilitate the state's*
2 *goal of maximizing water recycling.*

3 (2) (A) Subject to subparagraph (B), any fees collected
4 pursuant to this section shall be deposited in the Waste Discharge
5 Permit Fund, which is hereby created. The money in the fund is
6 available for expenditure by the state board, upon appropriation
7 by the Legislature, solely for the purposes of carrying out this
8 division.

9 (B) (i) Notwithstanding subparagraph (A), the fees collected
10 pursuant to this section from stormwater dischargers that are
11 subject to a general industrial or construction stormwater permit
12 under the national pollutant discharge elimination system
13 (NPDES) shall be separately accounted for in the Waste
14 Discharge Permit Fund.

15 (ii) Not less than 50 percent of the money in the Waste
16 Discharge Permit Fund that is separately accounted for pursuant
17 to clause (i) is available, upon appropriation by the Legislature,
18 for expenditure by the regional board with jurisdiction over the
19 permitted industry or construction site that generated the fee to
20 carry out stormwater programs in the region.

21 (iii) Each regional board that receives money pursuant to
22 clause (ii) shall spend not less than 50 percent of that money
23 solely on stormwater inspection and regulatory compliance issues
24 associated with industrial and construction stormwater programs.

25 (3) Any person who would be required to pay the annual fee
26 prescribed by paragraph (1) for waste discharge requirements
27 applicable to discharges of solid waste, as defined in Section
28 40191 of the Public Resources Code, at a waste management unit
29 that is also regulated under Division 30 (commencing with
30 Section 40000) of the Public Resources Code, shall be entitled to
31 a waiver of the annual fee for the discharge of solid waste at the
32 waste management unit imposed by paragraph (1) upon
33 verification by the state board of payment of the fee imposed by
34 Section 48000 of the Public Resources Code, and provided that
35 the fee established pursuant to Section 48000 of the Public
36 Resources Code generates revenues sufficient to fund the
37 programs specified in Section 48004 of the Public Resources
38 Code and the amount appropriated by the Legislature for those
39 purposes is not reduced.

1 (e) Each person discharges waste in a manner regulated by this
2 section shall pay an annual fee to the state board. The state board
3 shall establish, by regulation, a timetable for the payment of the
4 annual fee. If the state board or a regional board determines that
5 the discharge will not affect, or have the potential to affect, the
6 quality of the waters of the state, all or part of the annual fee shall
7 be refunded.

8 (f) (1) The state board shall adopt, by emergency regulations,
9 a schedule of fees authorized under subdivision (d). The total
10 revenue collected each year through annual fees shall be set at an
11 amount equal to the revenue levels set forth in the Budget Act for
12 this activity. The state board shall automatically adjust the annual
13 fees each fiscal year to conform with the revenue levels set forth
14 in the Budget Act for this activity. If the state board determines
15 that the revenue collected during the preceding year was greater
16 than, or less than, the revenue levels set forth in the Budget Act,
17 the state board may further adjust the annual fees to compensate
18 for the over and under collection of revenue.

19 (2) The emergency regulations adopted pursuant to this
20 subdivision, any amendment thereto, or subsequent adjustments
21 to the annual fees, shall be adopted by the state board in
22 accordance with Chapter 3.5 (commencing with Section 11340)
23 of Part 1 of Division 3 of Title 2 of the Government Code. The
24 adoption of these regulations is an emergency and shall be
25 considered by the Office of Administrative Law as necessary for
26 the immediate preservation of the public peace, health, safety,
27 and general welfare. Notwithstanding Chapter 3.5 (commencing
28 with Section 11340) of Part 1 of Division 3 of Title 2 of the
29 Government Code, any emergency regulations adopted by the
30 state board, or adjustments to the annual fees made by the state
31 board pursuant to this section, shall not be subject to review by
32 the Office of Administrative Law and shall remain in effect until
33 revised by the state board.

34 (g) The state board shall adopt regulations setting forth
35 reasonable time limits within which the regional board shall
36 determine the adequacy of a report of waste discharge submitted
37 under this section.

38 (h) Each report submitted under this section shall be sworn to,
39 or submitted under penalty of perjury.

1 (i) The regulations adopted by the state board pursuant to
2 subdivision (f) shall include a provision that annual fees shall not
3 be imposed on those who pay fees under the national pollutant
4 discharge elimination system until the time when those fees are
5 again due, at which time the fees shall become due on an annual
6 basis.

7 (j) Any person operating or proposing to construct an oil, gas,
8 or geothermal injection well subject to paragraph (3) of
9 subdivision (a), shall not be required to pay a fee pursuant to
10 subdivision (d), if the injection well is regulated by the Division
11 of Oil and Gas of the Department of Conservation, in lieu of the
12 appropriate California regional water quality control board,
13 pursuant to the memorandum of understanding, entered into
14 between the state board and the Department of Conservation on
15 May 19, 1988. This subdivision shall remain operative until the
16 memorandum of understanding is revoked by the state board or
17 the Department of Conservation.

18 (k) In addition to the report required by subdivision (a), before
19 any person discharges mining waste, the person shall first submit
20 both of the following to the regional board:

21 (1) A report on the physical and chemical characteristics of the
22 waste that could affect its potential to cause pollution or
23 contamination. The report shall include the results of all tests
24 required by regulations adopted by the board, any test adopted by
25 the Department of Toxic Substances Control pursuant to Section
26 25141 of the Health and Safety Code for extractable, persistent,
27 and bioaccumulative toxic substances in a waste or other
28 material, and any other tests that the state board or regional board
29 may require, including, but not limited to, tests needed to
30 determine the acid-generating potential of the mining waste or
31 the extent to which hazardous substances may persist in the
32 waste after disposal.

33 (2) A report that evaluates the potential of the discharge of the
34 mining waste to produce, over the long term, acid mine drainage,
35 the discharge or leaching of heavy metals, or the release of other
36 hazardous substances.

37 (l) Except upon the written request of the regional board, a
38 report of waste discharge need not be filed pursuant to
39 subdivision (a) or (c) by a user of recycled water that is being
40 supplied by a supplier or distributor of recycled water for whom

1 a master recycling permit has been issued pursuant to Section
2 13523.1.

3 SEC. 6. Section 13523 of the Water Code is amended to read:

4 13523. (a) Each regional board, after consulting with and
5 receiving the recommendations of the State Department of
6 Health Services and any party who has requested in writing to be
7 consulted, and after any necessary hearing, shall, if in the
8 judgment of the board, it is necessary to protect the public health,
9 safety, or welfare, prescribe water reclamation requirements for
10 water which is used or proposed to be used as ~~reclaimed~~ recycled
11 water.

12 (b) The requirements may be placed upon the person
13 reclaiming water, the user, or both. ~~The requirements shall be~~
14 ~~established in conformance with the uniform statewide~~
15 ~~reclamation criteria established pursuant to Section 13521. If the~~
16 ~~use of the recycled water is within a category for which the State~~
17 ~~Department of Health Services has established uniform statewide~~
18 ~~reclamation criteria pursuant to Section 13521 and the water~~
19 ~~meets the definition set forth in subdivision (c) of Section~~
20 ~~13529.2, those criteria shall constitute the sole requirements for~~
21 ~~the permitted use.~~ The regional board may require the submission
22 of a preconstruction report for the purpose of determining
23 compliance with the uniform statewide reclamation criteria. The
24 requirements for a *category of* use of reclaimed water not
25 addressed by the uniform statewide reclamation criteria shall be
26 considered on a case-by-case basis.

27 SEC. 7. Section 13552.1 is added to the Water Code, to read:

28 13552.1. (a) A fire incident commander may use recycled
29 water to prevent the destruction of life, property, or the
30 environment in a catastrophic fire.

31 (b) The recycled water producer, user, or firefighting agency
32 using water prescribed in subdivision (a) shall not be required to
33 file an engineering report before use of the recycled water, but
34 the regional board may require subsequent notification of the use.

35 (c) As used in this section:

36 (1) "Catastrophic fire" means a condition exists, in the opinion
37 of the fire incident commander, that may result in severe harm to
38 life, property, or the environment if recycled water as authorized
39 pursuant to this section is not used.

1 (2) "Recycled water" means recycled water as defined in
2 subdivision (n) of Section 13050, that is treated at a level defined
3 or described by the State Department of Health Services as
4 appropriate for use in structural and nonstructural firefighting.

5 SEC. 8. Section 13552.5 is added to the Water Code, to read:

6 13552.5. (a) On or before January 1, 2008, the state board
7 shall prescribe general water recycling requirements applicable to
8 nonpotable uses of recycled water. General water recycling
9 requirements shall replace individual water recycling
10 requirements and waste discharge requirements for nonpotable
11 uses of recycled water, and their prescription shall be considered
12 to be a ministerial action.

13 (b) The general water recycling requirements shall implement
14 the uniform statewide recycling criteria adopted by the State
15 Department of Health Services pursuant to Section 13521 and
16 shall address all of the following:

17 (1) Incidental runoff of recycled water from irrigation sites
18 and impoundments.

19 (2) Permitting of off-pipeline uses, including, but not limited
20 to, emergency firefighting and dust suppression.

21 (3) Application of the state's antidegradation policy to
22 nonpotable uses of recycled water.

23 (c) The state board may establish a reasonable schedule of fees
24 to reimburse the costs it incurs in developing and implementing
25 the general water recycling requirements.

26 SEC. 9. Section 13557 is added to the Water Code, to read:

27 13557. (a) On or before July 1, 2006, the department, in
28 consultation with the State Department of Health Services, shall
29 adopt and submit to the California Building Standards
30 Commission a state version of Appendix J of the Uniform
31 Plumbing Code adopted by the International Association of
32 Plumbing and Mechanical Officials to provide design standards
33 to safely plumb buildings with both potable and recycled water
34 systems.

35 (b) The department may adopt revisions to the state version as
36 it determines to be necessary to further the state's goal of
37 maximizing water recycling.

38 (c) On or before July 1, 2006, the Department of Housing and
39 Community Development shall submit to the California Building
40 Standards Commission an amendment to the state plumbing code

- 1 adopted pursuant to subdivision (a) to remove the skull and
- 2 crossbones symbol for recycled water.

O